

Third Supplement to Memorandum 96-7

1996 Legislative Program: Statute of Limitations in Trust Matters (Letter from Paul Gordon Hoffman)

Paul Gordon Hoffman has written in opposition to the letter from Judge Arnold H. Gold attached to the First Supplement concerning the Commission's recommendation on *Statutes of Limitations in Trust Matters: Probate Code Section 16460*. (Mr. Hoffman's letter is attached.)

Mr. Hoffman argues in favor of the Commission's recommendation, specifically supporting inclusion of the governing provisions in the Probate Code and preferring the comprehensive three-year statute of limitations to the three or four year period that may be applied under the *DiGrazia* case.

However, Mr. Hoffman would prefer that the limitations period be reduced to one year. He argues that the existing three-year period results in unnecessary costs since trustees will seek to be discharged from liability by obtaining court review of their accounts. The Commission originally considered shorter periods such as six months and one year when the Trust Law was under construction. At that time, a shorter period was not thought to be legislatively feasible. The result was the existing three-year period. The staff would not recommend attempting to change this period without further study. It would be easy to do in terms of drafting the necessary amendments, however, so any interested persons or groups could easily sponsor their own legislation to shorten the three-year statute.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

HOFFMAN
SABBAN &
WATENMAKER

LAWYERS

10880 Wilshire
Boulevard
Suite 2200
Los Angeles
California 90024
(310) 470-6010
FAX (310) 470-6735

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JAN 18 1996

File: _____

January 16, 1996

Paul Gordon Hoffman

California Law Revision Commission
Room D-1
4000 Middlefield Road
Palo Alto, CA 94303-4739

Re: Study L-3057: Statute of Limitations

Ladies & Gentlemen:

This letter is written in response to the First Supplement to Memorandum 96-7. I strongly disagree with the position taken by Judge Arnold H. Gold regarding the statute of limitations on trust accountings.

First, the statute of limitations should be set forth fully and completely in the Probate Code; there should be no trust law cases in which the statute of limitations is set forth in the Code of Civil Procedure.

Second, I feel strongly that Trustees should be able to obtain a prompt and full discharge for their actions. Once a beneficiary receives adequate notice of actions taken by a Trustee, the burden of moving forward should shift to the beneficiary. Three years from receipt of an account that adequately discloses the basis for a claim is more than enough time to file an action; four years from the discovery of the wrong is far too long.

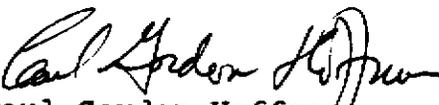
Indeed, I feel that the statute of limitations should be shortened so that it does not extend beyond one year from delivery of an accounting. The current arrangement places too great a premium on seeking court review of an accounting (reducing the effective time for making a claim from a matter of months, in the case of court reviewed accountings, to three years, in the case of non-court reviewed accountings.) This leads to Trustees incurring additional legal fees to seek court



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approval in an effort to shut off potential claims. The problem is particularly acute on termination of a trust, where the Trustee distributes all of the assets and no longer has a fund out of which to seek payment of his legal fees in contesting a claim.

Very truly yours,


Paul Gordon Hoffman

PGH:gt
ATTORNEY\PGH\GENERAL\STATOFLLI.LET